

DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

NO. R. 2353

5 August 2022

**NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY ACT, 2004
(ACT NO. 39 OF 2004)**

**CONSULTATION ON PROPOSED REGULATIONS FOR IMPLEMENTING AND ENFORCING
PRIORITY AREA AIR QUALITY MANAGEMENT PLANS**

I, Barbara Dallas Creecy, Minister of Forestry, Fisheries and the Environment, hereby, under section 20, read with sections 56 and 57 of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004), consult on the proposed Regulations for implementing and enforcing priority area air quality management plans, as set out in the Schedule hereto.

Despite concerted attempts to implement various emission control measures and tools in the areas declared as priority areas, including specific air quality management interventions, to bring these areas into compliance with the National Ambient Air Quality Standards, emissions of certain pollutants continue to result in persistent non-compliance with these standards.

These Regulations set out the requirements necessary for implementing and enforcing any existing and future approved priority area Air Quality Management Plans, including funding arrangements, measures to facilitate compliance with such plans, penalties for any contravention of or any failure to comply with such plans and regular review of such plans. The Regulations will provide for mandatory implementation of interventions; provide mechanisms for government to monitor and evaluate the effectiveness of the plans; as well as activate enforcement measures where non-compliance is identified. They apply to all key stakeholders identified to be significant contributors to poor air quality in the respective air quality management plans, including listed activities; controlled emitters; mining operations and government stakeholders.

These Regulations do not introduce new emission control tools or mandates, but rather coordinate the implementation of already regulated tools and functions. The anticipated outcome of the Regulations is improved implementation of, and compliance with, Priority Area Air Quality Management Plans, resulting in ambient air that complies with National Ambient Air Quality Standards with the concomitant reduction in negative public health impacts. The main beneficiaries of the effective implementation of the Regulations are the communities within the priority areas who will benefit from reduced medical costs and a reduced burden of upper respiratory disease, especially vulnerable groups such as the aged, children, and people with underlying health issues.

The Department of Forestry, Fisheries and the Environment does not anticipate a significant risk of undesirable cost increases due to the introduction of the Regulations. Social groups have committed their support to the establishment of the Regulations to enforce implementation of Priority Area Air Quality Management Plans.

Members of the public are invited to submit to the Minister, within 30 days from the date of the publication of this notice ***in the newspaper, or a Notice in the Gazette, whichever date is the last date***, written inputs or comments on the draft Regulations to the following addresses:

By post to: The Director-General: Department of Forestry, Fisheries and the Environment
Attention: Mr Olebogeng Matshediso
Private Bag X447
PRETORIA
0001

By hand at: 473 Steve Biko Road, Environment House, Arcadia, 0083

By email: OMatshediso@dfre.gov.za

Any enquiries in connection with the notice can be directed to Mr Victor Loate at Tel: 012 399 8507 / Cell: 066 081 6205, or by email: VLoate@dfre.gov.za.

Representations or comments received after the closing date may be disregarded.



BARBARA DALLAS CREECY
MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

SCHEDULE

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1. Definitions

In these Regulations any word or expression to which a meaning has been assigned in the Act, will have the meaning so assigned, and unless the context otherwise indicates—

“**emission reduction and management plan**” means the emission reduction and management plan contemplated in regulation 4 of these Regulations, to be prepared and submitted by the identified stakeholders that aims to minimise, prevent and manage emissions;

“**identified stakeholders**” means the stakeholders that have been identified in the air quality management plan to have a role in the implementation thereof and includes the stakeholders identified in terms of regulation 3(1) of these Regulations;

“**National Air Quality Officer**” means an officer so designated in terms of section 14(1) or (2) or (3) of the Act;

“**person**” includes a juristic person;

“**the Act**” means the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004);

“**these Regulations**” means the Regulations for implementing and enforcing priority area air quality management plans, 2022.

2. Purpose

- (1) The purpose of these Regulations is to prescribe the requirements for implementing and enforcing existing and future approved priority area air quality management plans referred to in section 19(1)(a) and 19(5) of the Act.

3. Application

- (1) These Regulations apply to stakeholders identified in a priority area air quality management plan referred to in section 19(1)(a) and 19(5) of the Act, including:
 - (a) Any person conducting a listed activity;
 - (b) Any person operating a controlled emitter;
 - (c) Any holder of a right related to a prospecting operation, exploration operation, mining operation, and production operation as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);
 - (d) Every national department, provincial department, and organ of state responsible for preparing an environmental management plan in terms of Chapter 3 of the National Environmental Management Act, 1998 (Act No. 107 of 1998); and
 - (e) National, provincial and local spheres of government within the boundaries of the priority area.

4. Emission reduction and management plan

- (1) The identified stakeholders listed under regulation 3(1)(a) to (c) of these Regulations must, within the timeframes specified in the priority area air quality management plan, submit the emission reduction interventions and management plans to the relevant licensing authority or air quality officer for approval.
- (2) The identified stakeholders listed under regulation 3(1)(d) and (e) of these Regulations must, within the timeframes specified in the priority area air quality management plan, submit emission reduction interventions and management plans for the activities which they are responsible for, to the National Air Quality Officer for noting by the Minister.
- (3) The licensing authority must incorporate emission reduction interventions and management plans into the atmospheric emission licence in line with section 46(1) of the Act.
- (4) The identified stakeholders listed under regulation 3(1) of these Regulations must implement the approved reduction interventions and management plans submitted in terms of sub-regulation 4(1) and (2) within the timeframes specified in the priority area air quality management plan.

5. Funding and resources for the implementation of a priority area air quality management plan

- (1) The identified stakeholders must to the extent possible provide adequate financial support funding and necessary resources for the implementation of the priority area air quality management plan

6. Reporting requirements

- (1) The identified stakeholders must by 31 March of every calendar year submit progress reports to the National Air Quality Officer on the implementation of emission reduction interventions and management plans for the preceding calendar year.
- (2) Where 31 March falls on a Saturday, Sunday or public holiday, that period must be extended to the end of the following day which is not a Saturday, Sunday or public holiday.

- (3) The National Air Quality Officer must consolidate the stakeholders annual progress reports for inclusion thereof in the reporting on the implementation of the air quality management plans in terms of section 17 of the Act.
- (4) Reporting on emissions by holders of atmospheric emission licences in priority areas must be done in line with the atmospheric emission licenses and regulations published in terms of section 12 of the Act.
- (5) The reports contemplated in sub-regulation 6(1) must be submitted in a format specified by the National Air Quality Officer.

7. Review and monitoring of a priority area air quality management plan

- (1) The priority area air quality management plans must be reviewed every five years or as deemed necessary by the Minister.
- (2) The identified stakeholders must review their emission reduction interventions and management plans in line with the review of the priority area air quality management plan and submit the revised plan to the relevant licensing authority or air quality officer for the approval thereof, within the timeframes specified in the priority area air quality management plan.

8. Offences

- (1) A person identified as a stakeholder under regulation 3(1)(a), (b) and (c) of these Regulations, commits an offence if that person—
 - (a) provides incorrect or misleading information in the emission reduction and management plans submitted in terms of these Regulations;
 - (b) fails to timeously submit or implement emission reduction interventions and management plans within the specified timeframes in terms of regulation 4 of these Regulations;
 - (c) fails to submit the annual progress report to the National Air Quality Officer for approval within the timeframes stipulated in terms of regulation 6 of these Regulations; or
 - (d) fails to comply with regulation 7 of these Regulations.

9. Penalties

- (1) A person found guilty of an offence in terms of regulation 8 of these Regulations is liable in the case of a first conviction to a fine not exceeding five (5) million Rands or to imprisonment for a period not exceeding five (5) years, and in the case of a second or subsequent conviction, to a fine not exceeding ten (10) million Rands or imprisonment for a period not exceeding ten (10) years, or to both a fine and such imprisonment.

10. Transitional provisions

- (1) Stakeholders identified in existing priority area air quality management plans, who have not yet developed and submitted their emission reduction and management plans, must do so in line with regulation 4 of these Regulations, within six (6) months of the coming into operation of these Regulations.

11. General requirements

- (1) The control of dust in priority areas must be managed in line with the Regulations published in terms of section 32 of the Act.

12. Repeal of regulations

- (1) The Vaal Triangle Priority Area AQMP Implementation Regulations, 2009 published under Notice No. R. 614 in *Government Gazette* No. 32254 of 29 May 2009 are hereby repealed.

13. Short title and commencement

- (1) These Regulations are the Regulations for implementing and enforcing Priority Area Air Quality Management Plans, 2022, and come into operation on the date of publication in the *Government Gazette*.